## De minimis Rules and Guidelines

§ 734.4 and Supplement No. 2 to part 734 of the EAR (as modified on 11 March 2016)

## **♣** IF ...

- ➤ Non-U.S.-made commodity '*incorporates*' controlled U.S.-origin commodities,
- Non-U.S.-made commodity is 'bundled' with controlled U.S.-origin software,
- Non-U.S.-made software '*incorporates*' controlled U.S.-origin software, or
- ➤ Non-U.S.-made technology is commingled with or drawn from controlled U.S.-origin technology,
- **THEN**... the non-U.S.-made item is *subject to the EAR* if the U.S.-origin *controlled content* exceeds (based on destination):

# **10%**

- o For non-"600 series," non-9x515, non-'see-through carve-out' items to Country Group E:I; and
- o For EAR99 items (except food and medicines) to *N. Korea* and *Syria*.

#### > 25%

- o For .a-.x items, in "600 series" & 9x515, or 'see-through carve-out' items, except to Country Group D:5;
- o For non-"600 series," non-9x515, or non-'see-through carve-out' items, except to Country Group E:I; and
- o <u>For EAR99 items</u> to *Cuba* and *Crimea region of Ukraine* (except food, medicines and certain software).

## **▶** Unlimited (not subject to the EAR for *de minimis* purposes)

- o For .y items, in "600 series" or 9x515, except to Country Group E:1, E:2 and China;
- For items controlled for (AT) reasons only, except to Country Group E:1 and E:2; and
- o For EAR99 items to all locations, except where noted above.

#### **EXCEPT #1 (DESTINATION BASED)**

- $\triangleright$  .a .x items, in "600 series" & 9x515, or 'see-through carve-out' content, destined to Country Group D:5; and
- $\triangleright$  .y items, in "600 series" & 9x515, destined to Country Groups *E:1*, *E:2* or *China*.

<sup>&</sup>lt;sup>1</sup> 'See-through carve-out item' - Articles described on the U.S. Munitions List (22 CFR part 121) that pursuant to a specific carve-out note are subject to the EAR when, prior to export, reexport, retransfer, or temporary import, they are integrated into and included as an integral part of an item subject to the EAR. These items are always considered controlled content for purposes of the de minimis rule.

<sup>•</sup> USML Category VIII(e), (h)(2)-(5), (7), (13), (14), (17)-(19), and (21)-(26) when incorporated into a 9A610 military aircraft

<sup>•</sup> USML Category XII(c) Military second and third generation image intensification tubes and military infrared focal plane arrays identified in this subparagraph are licensed by the Department of Commerce (ECCN 6A002A and 6A003A)) when part of a commercial system.

<sup>•</sup> USML Category XV(c)(3) and (e) when incorporated into an item subject to the EAR

## **4** EXCEPT #2 (U.S.-ORIGIN CONTENT BASED)

- ➤ Technology controlled by ECCN 9E003.a.1 through a.8, .h, .i, and .j, when redrawn, used, consulted, or otherwise commingled abroad;
- > Certain components of high performance computers;
- > Encryption 5E002, and encryption commodities and software that don't meet the eligibility criteria in § 734.4(b);
- > QRS 11 if in commercial standby instrument system or commercial aircraft with such system; and
- Non-U.S.-made military commodities that incorporate 6A003.b.4.b cameras.

#### **EXCEPT #3 (NON-U.S.-MADE ITEM BASED)**

- ➤ Commercial primary or standby instrument systems of the type described in ECCN 7A994 on the Commerce Control List (supplement no. 1 to part 774 the EAR) when the systems integrate QRS11-00100-100/101 Micromachined Angular Rate Sensors;
- ➤ Commercial automatic flight control systems when the systems integrate QRS11-00050-443/569 Micromachined Angular Rate Sensors; and
- ➤ Aircraft of the type described in ECCN 9A991 when such aircraft incorporate a primary or standby instrument system integrating a QRS11-00100-100/101 sensor or an automatic flight control system integrating a QRS11-00050-443/569 sensor.

## **ABOVE OR INELIGIBLE FOR DE MINIMIS, NOW WHAT?**

- ➤ Classify the non-U.S.-made product (self-classification vs BIS classification)
- > Determine License Requirements
- > Determine License Exception eligibility
- > Obtain any necessary authorization

# For additional guidance



#### **4** ADDITIONAL GUIDELINES

#### Controlled Content

- > U.S.-origin items that require a license or License Exception to the ultimate destination of the non-U.S.-made product
  - o 'See-through carve-out items' are always counted as controlled content; and
  - EAR99 items are considered "controlled content" for Cuba (E:2), N. Korea (E:1) (except food and medicines), Syria (E:1) (except food and medicines), and Crimea region of Ukraine (except food, medicines and certain software);

## **▶** U.S.-origin content that is not considered controlled content for *de minimis* calculations

- o Items eligible for License Exception GBS;
- o Items that do not require a license to the ultimate destination of the non-U.S. made product (NLR designated items); and
- o Items subject to Short Supply (SS) controls.
- > Fair Market Value of the controlled content is needed to calculate *de minimis* percentage.
- > When determining controlled content, only factor in the destination country.
  - End use and end user license requirements are not relevant when determining "controlled content."
  - o If your non-U.S. item is subject to the EAR pursuant to the *de minimis* rules, then all of the EAR policies must be considered.

# ❖ U.S. items are 'incorporated' when all of the following conditions are met:

- They are essential to the functioning of the non-U.S.-made equipment;
- They are customarily included in the sale of non-U.S.-made items; and
- They are exported abroad with the non-U.S.-made item.

#### Bundled

- Software that is configured for a specific commodity, but is not necessarily physically integrated into the commodity.
- ➤ Eligible software is software that is listed on the Commerce Control List (CCL) and is controlled for anti-terrorism (AT) reasons or software that is designated EAR99 (subject to the EAR, but not listed on the CCL).

## **❖** One-time report required for technology (not commodity or software)

- > Percentage of U.S. content by value
- > Description of your calculations
- > Values, assumptions, methodologies
- > Export price of U.S. content
- ➤ Description and fair market value of the non-U.S.-made technology